

# **SEXUAL HARASSMENT GUIDELINES**

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TABLE OF CONTENTS  
for  
**SEXUAL HARASSMENT GUIDELINES**

**Item 1.....Sexual Harassment Questions and Answers**

**Item 2.....Elements of Sexual Harassment**

**Item 3.....General Sexual Harassment Behaviors**

**Item 4.....Specific Sexual Harassment Behaviors**

**Item 5.....Step-By-Step Analysis of Sexual Harassment**

**Item 6.....The Reasonable Woman Standard**

**Item 7.....Sexual Harassment Scenarios Quiz**

**Item 8.....Sexual Harassment Vignettes**

## **Sexual Harassment Questions and Answers**

### **General:**

#### **1. What is sexual harassment?**

- Sexual harassment has been included as prohibited behavior that is a part of Unlawful Workplace Harassment, as defined by the State Personnel Manual. According to State Personnel Policy, "unlawful workplace harassment is unwelcomed or unsolicited speech or conduct based on race, **sex**, creed, religion, national origin, age, color, or handicapping condition as defined by G.S. 168A-3 that creates a hostile work environment or circumstances involving quid quo pro."

#### **2. Are there different kinds of sexual harassment?**

- Yes, there are two different kinds of sexual harassment: quid pro quo and hostile work environment, which is the prevalent form of sexual harassment. As defined in the State Personnel Manual:  
**"Quid pro quo** harassment consists of unwelcome sexual advances, requests for sexual favors, or other verbal or physical conduct when 1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, or 2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual.  
**Hostile work environment** is one that both a reasonable person would find hostile or abusive and one that the particular person who is the object of the harassment perceives to be hostile or abusive. Hostile work environment is determined by looking at all of the circumstances, including the frequency of the allegedly harassing conduct, its severity, whether it is physically threatening or humiliating, and whether it unreasonably interferes with an employee's work performance."

#### **3. What are examples of sexual harassment?**

- There are primarily three types of sexual harassment: physical, verbal, and visual. Specific examples of sexual harassment include, but are not limited to verbal or written sexual comments, sexual jokes, and sexual discussions; sexual software or websites at work; touching; rubbing; staring; and leering.

#### **4. What if the person did not intend to sexually harass the complainant?**

- Intent is irrelevant for sexual harassment. The test of whether sexual harassment occurred is whether a reasonable woman would construe the behavior as sexually offensive and unwelcome.

**5. What if a person is falsely accused of sexual harassment?**

- If a person is falsely accused of sexual harassment, the Department may conclude, based on the evidence, that the complainant has filed false charges against the respondent. Appropriate remedial measures or disciplinary action will result against a complainant who deliberately files false charges.

**6. Can men be sexually harassed?**

- Yes, men can be sexually harassed.

**7. Can someone sexually harass someone else who is the same gender?**

- Yes; the U.S. Supreme Court held that sexual harassment laws do extend to persons of the same gender who allege sexual harassment.

**8. Are we allowed to physically touch, i.e., hug, anyone at work?**

- There are no laws prohibiting casual, non-violent, non-sexual physical touching at work.; however, given the fact that reasonable people can be offended by different types of behavior and that reasonable people can interpret touching in different ways, it is advisable that employees refrain from physically touching other employees while at work, when possible.

**9. What should a person do if he/she feels that they are being sexually harassed at work?**

- Any employee who feels he or she is being sexually harassed at work should document the offensive conduct, including details of what transpired in addition to any witnesses, the time, date, and location of the behavior. If the employee feels comfortable, he or she may confront the offender regarding the offensive nature of the behavior. The employee may do this verbally or in writing. If the employee does not feel comfortable doing this, the next step is to notify a supervisor about the behavior. If the offender is a supervisor, the employee should contact an Employee Relations Specialist or Human Resource Manager.

## **The Complaint:**

### **10. How does someone file a sexual harassment complaint?**

- A sexual harassment complaint must be filed with the employee's supervisor, Employee Relations Specialist, or Human Resource Manager within 30 days of the most recent incident. The complaint can be in the form of a letter or other written documentation that includes details of the allegations such as the time, location, dates, witnesses, and other relevant information. Per policy, the agency has 60 days within which to investigate the complaint and to inform the complainant and respondent of the results. An employee may file a sexual harassment complaint directly with the Office of Administrative Hearings, who may refer the complaint to the EEOC. An employee may also file a sexual harassment complaint with the EEOC, who may conduct their own investigation. Human Resources and/or Employee Relations have information regarding the complaint procedures.

### **10. Is the complaint kept confidential?**

- The complaint is only shared with those who have a need to know of the complaint, its allegations, and alleged witnesses. The respondent to the complaint would have a need to know so that he or she would be able to respond to the allegations. Also, those with a need to know include investigators and final decision makers.

### **11. Can someone file an anonymous sexual harassment complaint?**

- Anonymous sexual harassment complaints are not encouraged because in order for a thorough and complete investigation to occur, it is often necessary to know who the complainant is just in case the investigators have follow-up questions regarding the allegations. Also, the respondent is entitled to due process rights which include being able to confront the accuser by responding to the allegations.

**12. Can employees discuss a sexual harassment complaint with a supervisor or manager and request that no investigation be conducted?**

- An employee should not expect a supervisor or a manager to agree not to investigate sexual harassment allegations. Sexual harassment is looked upon as very serious allegations under state and federal law. As a result, an employer has a legal obligation to make a good faith effort to thoroughly investigate allegations of sexual harassment.

**13. Who conducts sexual harassment investigations?**

- Sexual harassment investigations are usually conducted by an investigative team, consisting of a representative from Employee Relations and/or Human Resources, that is made up of members of both genders to ensure fairness and objectivity.

**14. Will the complainant know who was interviewed as witnesses?**

- The complainant will not be told the names of alleged witnesses; however, the complainant will have to be questioned about allegations involving other witnesses. Also, witnesses may have allegations that have to be reviewed with the respondent. The respondent may be able to assume that, based on the nature of some of the necessary questions, certain individuals have been or will be interviewed. All participants in the investigation, including the respondent and witnesses, are admonished to keep the investigation confidential by not discussing the investigation or their investigative statements with others.

**15. Will the complainant know the results of the sexual harassment investigation?**

- Yes, the complainant and the respondent will be informed of the results of the sexual harassment investigation. They will be informed in writing of whether the allegations were substantiated or not substantiated.

**17. What are the possible outcomes of a sexual harassment investigation?**

- Possible outcomes of a sexual harassment investigation include findings that the allegations were substantiated or unsubstantiated. Unsubstantiated allegations do not mean that the allegations did not occur; it merely means that the evidence did not support that the allegations definitely did occur.

**18. How do the investigators reach a conclusion that sexual harassment did or did not occur?**

- The investigators must base their conclusion on the evidence that was gathered over the course of their investigation. Such evidence includes witness statements, written documentation, and admissions. Absent any evidence, the investigators cannot conclude that sexual harassment occurred.

**19. Can a complainant stipulate the remedy for the harassment if the harassment is substantiated?**

- A complainant may state what remedy he or she seeks when he or she files the complaint; however, management is not bound by this request. Management has the discretion to decide the appropriate remedial or disciplinary action based on the seriousness of the substantiated allegations and management's past practice of how such incidents were handled.

**20. Will the complainant know what disciplinary action was taken against the respondent?**

- The complainant will not know what disciplinary action, if any, that was taken against the respondent. Disciplinary information regarding another employee is deemed to be confidential personnel matters and is not disclosable to others.

**21. Will a copy of the investigation report go in the complainant's, respondent's, or witnesses' personnel file?**

- No, a copy of the investigation report will not go in the complainant's, respondent's or witnesses' personnel file. The investigation report is kept in a separate, confidential administrative file.

**Effects:**

**22. Will a complainant be disciplined for filing a false sexual harassment charge?**

- A complainant may be disciplined for filing a false sexual harassment charge if evidence is presented by the respondent or others that the complainant knowingly filed a false charge.

**23. Can having a sexual harassment charge filed against me become a permanent part of my employment record at DHHS?**

- If the sexual harassment charge is substantiated, a letter stating the substantiated charge and the resulting discipline will become a part of the respondent's personnel file.

**24. If I apply for or obtain a job outside of DHHS, but within state government, will the sexual harassment charge be disclosed to a prospective employer?**

- A sexual harassment charge may be disclosed to a prospective employer if the prospective employer is another NC state agency because the personnel file follows an employee when he or she transfers to another NC state agency. If the prospective employer is not another NC state agency, the sexual harassment charge may be disclosed to a prospective employer if criminal charges result from the behavior.



## **ELEMENTS OF SEXUAL HARASSMENT**

For conduct to be substantiated as sexual harassment, the following elements must be present.

The conduct must be:

1. Physical, verbal, or visual;
2. sexual in nature;
3. unwelcome;
4. deliberate  
and/or
5. continuous/pervasive/egregious.

\*For unwelcome conduct of a sexual nature, it must be:

1. An employment decision, by a higher-ranking employee concerning a lower-ranking employee, that is based on either acquiescence or opposition to the exchange of some benefit for sexual conduct

OR

2. Unwelcome verbal or physical conduct of a sexual nature that was sufficiently severe or pervasive enough to create a hostile, offensive, threatening, or intimidating environment which unreasonably interferes with or alters the employee's work environment.

## **GENERAL SEXUAL HARASSMENT BEHAVIORS**

- SEXUAL COMMENTS IN CONVERSATION, LETTERS, NOTES, OR PHONE CALLS
- SEXUAL INNUENDOS
- SEXUAL CARTOONS, PICTURES, POSTERS, IMAGES, OR SLIDES
- SEXUALLY-SUGGESTIVE SOFTWARE PROGRAMS
- SEXUAL MATERIALS
- SEXUAL JOKES
- GENDER-SPECIFIC SEXIST COMMENTS
- TURNING A REPLY INTO A SEXUAL COMMENT
- SEXUAL TOUCHING
- GIVING HUGS
- WHISTLING OR CAT CALLS
- ASKING ABOUT SEXUAL EXPERIENCES
- REPEATEDLY ASKING SOMEONE FOR A DATE WHO IS NOT INTERESTED
- LOOKING SOMEONE UP AND DOWN IN A SEXUALLY-SUGGESTIVE MANNER

# **SPECIFIC SEXUAL HARASSMENT BEHAVIORS**

## **VERBAL BEHAVIOR**

- CALLING SOMEONE A HUNK, DOLL, HONEY, BABE, OR OTHER SEXIST COMMENTS
- MANIPULATING WORK DISCUSSIONS INTO SEXUAL TOPICS
- ASKING PERSONAL QUESTIONS ABOUT SOMEONE'S SOCIAL OR SEXUAL LIFE
- ASKING ABOUT SEXUAL PREFERENCES, HISTORY, OR FANTASIES
- MAKING SEXUAL COMMENTS ABOUT A PERSON'S BODY, LOOKS, OR CLOTHING
- TELLING LIES OR SPREADING RUMORS ABOUT SOMEONE'S SEX LIFE
- MAKING KISSING SOUNDS, SMACKING LIPS, OR HOWLING AT SOMEONE

## **NONVERBAL BEHAVIOR**

- STARING AT SOMEONE
- RESTRICTING OR HINDERING SOMEONE'S MOVEMENTS
- DISPLAYING SEXUAL AND/OR DEROGATORY COMMENTS ABOUT MEN OR WOMEN ON COFFEE MUGS, CLOTHING, HATS, ETC.
- MAKING SEXUAL GESTURES WITH BODY AND/OR HANDS, INCLUDING PELVIC ACTS
- GIVING LETTERS, GIFTS, AND/OR MATERIALS OF A SEXUAL NATURE
- MAKING FACIAL EXPRESSIONS, LIKE THROWING KISSES, LICKING LIPS, OR WINKING
- INVADING SOMEONE'S BODY SPACE BY STANDING OR SITTING CLOSER THAN APPROPRIATE FOR THE NATURE OF THE WORK BEING DONE

## **PHYSICAL BEHAVIOR**

- MASSAGING SOMEONE'S NECK, SHOULDERS, OR OTHER BODY PARTS
- TOUCHING SOMEONE'S CLOTHING, HAIR, OR OTHER BODY PARTS
- HUGGING, KISSING, PATTING, GOOSING, FONDLING, OR STROKING SOMEONE
- TOUCHING, RUBBING OR EXPOSING ONESELF SEXUALLY IN THE PROXIMITY OF OR IN THE VIEW OF SOMEONE
- BRUSHING UP AGAINST SOMEONE

## **STEP-BY-STEP ANALYSIS OF SEXUAL HARASSMENT**

To determine whether conduct is \_\_\_\_\_, apply the following steps and ask yourself:

**Step 1: Is the conduct**

**Step 2: Is the conduct**

**Step 3: Is the conduct \***

**Step 4: Is the conduct**

\*For unwelcome conduct of a sexual nature, sexual harassment can fall into one of the following categories:

3. Quid Pro Quo: An employment decision (such as a promotion or raise) by a higher-ranking employee concerning a lower-ranking employee, that is based on either acquiescence or opposition to the exchange of some benefit for sexual conduct  
OR
4. Hostile Work Environment: Unwelcome verbal or physical conduct of a sexual nature that was sufficiently severe or pervasive enough to create a hostile, offensive, threatening, or intimidating environment which unreasonably interferes with or alters the employee's work environment.

## THE REASONABLE WOMAN STANDARD

The **reasonable woman standard** is a legal acknowledgment that the sexually-intimidating perceptions of reasonable men and women differ because men and women react to sexually-suggestive situations differently.

In 1991, the 9th Circuit Court of Appeals identified the reasonable woman standard in the Elison vs. Brady case. This standard determines when unwelcome sexual behavior potentially creates a hostile work environment. The test is: Would a reasonable person of the victim's sex perceive the behavior in question as so hostile, intimidating, or offensive that the ability to do his or her job is adversely affected?

In light of the **reasonable woman standard**, all employees and management personnel must understand and identify the line between friendly behavior and subtle sexual harassment.

## NC DEPARTMENT OF HEALTH AND HUMAN SERVICES

Please analyze and indicate whether each scenario is sexual harassment.

1. Employees engage in sexual comments and jokes in which all parties participate.

Yes      No

2. Co-workers frequently touch or hug each other.

Yes      No

3. A female employee flirts by touching a male subordinate on the sleeve and complimenting his clothing.

Yes      No

4. A male employee compliments a female employee on her looks, everyday, in a flirting manner.

Yes      No

5. A vendor always greets your receptionist with a sexual innuendo and leering.

Yes      No

6. The delivery person is male and good-looking. The female employees continually tease and joke with him.

Yes      No

7. There is only one female employee in a traditionally male-only area. The men have left sexual memorabilia and pornographic materials in her locker and tool box.

Yes      No

8. Co-workers, who are male and female, joke while at work. They, privately, discuss sexual fantasies and experiences.

Yes      No

Sexual Harassment  
Scenarios  
Page Two

9. Someone told an off-color joke to a co-worker who did not mind the joke.

Yes      No

10. A co-worker asked another co-worker for a date.

Yes      No

11. An employee asked several questions about his co-worker's personal life. He hung around her desk during the day. He also asked her out to lunch. Eventually, he wrote notes to her to express his fondness.

Yes      No

## SEXUAL HARASSMENT VIGNETTES

**Please analyze the following vignettes and record your final responses for each.**

1. A male employee, Mr. Perennial, works with, primarily, female co-workers. He has been employed in this capacity for five years. All of the female co-workers know his disposition. During his five years of employment, the female employees all regard him as being immature and flirtatious. Mr. Perennial habitually told sexual jokes to his co-workers during their breaks. These breaks were usually not on State property. Last year, he playfully squirted a female co-worker on the front of her shirt with a water gun. He teased her about having a wet tee-shirt contest. Mr. Perennial, frequently, stands close to his female co-workers whenever he engages in conversations with them. Also, he asked two particular female co-workers to go out with him on the weekends. These two co-workers told him they were not interested. Mr. Perennial stopped asking them out for a couple of months, then he thought he would give it another shot. He continued to do this, off and on, for about a year. Six months ago, a new employee, Dee Sist, was hired. Dee Sist noticed his behavior and interaction with female employees. Dee Sist mentioned the above information to you, the supervisor. How will you handle the complaint? Is it sexual harassment? What steps will you take?
  
2. For three months, two employees were engaged in an intimate relationship. They ended their relationship last month. The male employee, Broke N. Hart, still had feelings for the female employee, Ms. Rubble. He pressured her to resume the relationship at work and away from work. He also touched her whenever he talked to her at work. She told him she was not interested. He discussed their break-up with their co-workers. Afterwards, the male co-workers asked her out. One night after work, Mr. Hart followed Ms. Rubble home. The female employee felt he was chasing her to get even. Ms. Rubble complained to you and relayed the above facts. You investigated and substantiated these facts. You counseled Mr. Hart about contacting Ms. Rubble and discussing his relationship with her, told him to refrain from discussing the relationship with other employees and told him to limit his contact with her at work. In addition, you rearranged their work schedules so that there was minimum contact between he two. Was this sexual harassment? Did you take appropriate action? Why or why not? What further action could you have taken?



## Sexual Harassment Vignettes

### Page Two

3. The employees you supervise are known to be very warm and friendly throughout the Department. Every morning, without fail, you know the employees in your office hug each other. The hugs are friendly and are not meant in a sexual way. Likewise, whenever your employees leave work in the afternoons, you know they all hug good-bye. These hugs are also friendly and are not meant in a sexual way. This practice has been going on for many years without any complaints. Last month, you hired a new employee, Iam New. Iam New is still getting to know the staff; however, the other employees wanted this new person to feel welcomed and a part of the team. As a result, after her first week or so on the job, the employees included Iam New in the hugging rituals. Two days ago, this Iam New came to you concerning the hugging. Iam New told you that the hugging is sexual harassment. What should you do? Is this sexual harassment? What steps would you undertake to resolve this issue?
  
4. As a supervisor, you like for your staff members to have a sense of familiarity and comfort; therefore, you try to keep the atmosphere light and casual. As of one month ago, you have had an all-female staff. Whenever you address your all-female staff, you, casually, refer to them as “girls.” Also, whenever you talk to others outside your department/site, you refer to your staff members as “the girls.” As a matter of fact, yesterday, you were having a conversation with another supervisor, Will Tell, about a project on which your staff is currently working. You told the other supervisor, “My girls are the best. Whenever I need them, they always come through for me. I couldn’t ask for a better set of girls.” Will Tell was offended by your referencing. Will Tell reported your comments, as sexual harassment, to the manager who is your boss. You have never done anything, other than this, in which someone perceived you as sexually harassing others. Did you engage in sexual harassment? Why or why not?

## RESPONSES TO SEXUAL HARASSMENT VIGNETTES

1.
  - A.) The complaint should be taken seriously and thoroughly investigated. Once an employer has knowledge of a sexual harassment complaint, the employer has a legal duty to investigate the complaint.
  - B.) Based on the above set of facts, a hostile work environment for sexual harassment could be argued. Also, the fact that sexual harassment occurs off State property and not on State time is irrelevant. This could still be a hostile work environment for sexual harassment. The test is how the employee is affected at work.
  - C.) The complainant and respondent should be interviewed.

If there are conflicting facts, additional witnesses (per the complainant and respondent) should be interviewed.

Afterwards, a determination should be made as to whether the allegations can be substantiated.

If there is no way to determine the truth after a good-faith effort has been made to conduct a reasonably thorough investigation, the investigation is legally sound.

The key is to have all steps **documented**.

2.
  - A.) Yes, this was sexual harassment.
  - B.) No, appropriate action was not taken.
  - C.) Appropriate action was not taken because no remedial action was mentioned.
  - D.) The alleged harasser could have been disciplined, i.e., a letter of reprimand. Also, the employer should check for the employee's understanding of sexual harassment and follow-up with any directives, etc.

The employer is held liable for sexual harassment if it fails to remedy the harassment.

The remedy is immediate and appropriate corrective action, which requires some form of discipline, to decrease the likelihood of continued harassment.

3.
  - A.) You should thoroughly investigate the complaint and take it seriously.
  - B.) This could be considered sexual harassment if the employee perceives that the hugs are sexual in nature. Also, if there is a pattern of people perceiving the hugging in an offensive or sexual way, it could be sexual harassment.
  - C.) You should, upon investigating and documenting your conclusions, advise your staff that the hugging is an action that could be perceived as sexual harassment. You should advise them to refrain from such regular physical contact in the work place. You should also advise them about third-party sexual harassment. You should not, in any way, implicate the identity of the complainant.
4.
  - A.) No, you did not engage in sexual harassment.
  - B.) The primary reason is because this is the only questionable behavior in which you have engaged. Even if the behavior was sexual harassment, you have only done this for one month. Usually, such a short time frame is not sufficient to satisfy the pervasive element for sexual harassment in the absence of other behavior. However, this type of referencing could be construed as sexist or demeaning; therefore, it is inappropriate. In addition, since you knew that your staff regularly engaged in such conduct, you have exposed yourself to any liability that may result.